

IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ICC ANTI-CORRUPTION CODE

between:

THE INTERNATIONAL CRICKET COUNCIL ("ICC")

and

MR DILHARA LOKUHETTIGE

DECISION

INTRODUCTION

1. Mr Dilhara Lokuhettige ("**Mr Lokuhettige**") is a Sri Lankan national. Between 2005 and 2013, he represented Sri Lanka as a cricketer nine times in One Day Internationals and twice in Twenty20 Internationals. His last international match took place in July 2013. On 7 October 2014 he entered into his last contract with the Sri Lankan Cricket Federation ("**SLC**"), ("**the SLC contract**") which expired on 31 May 2015. On 15 November 2015, he entered into a contract with the Moor Sports Club ("**MSC**"), a member of SLC, which lasted for six months, or for a whole season commencing from 1 November 2015 ("**the MSC contract**"). His last domestic match in SLC's first class competition took place on 18 February 2016 when he played for MSC ("**the MSC match**").
2. The ICC, in exercise of its responsibilities for the global governance of cricket, has brought the charges listed below ("**the Charges**") against Mr Lokuhettige under the 2014 ICC Anti-Corruption Code for Participants ("**the Code**") for adjudication by the ICC Anti-Corruption Tribunal ("**the Tribunal**"):

Charge No.1 - Breach of Code Article 2.1.1, in that Mr Lokuhettige was a party to an effort to fix or contrive or otherwise influence improperly the result, progress, conduct, or other aspect(s) of an International Match

Code Article 2.1.1 makes the following an offence: "Fixing or contriving in any

way or otherwise influencing improperly, or being a party to any agreement or effort to fix or contrive in any way or otherwise influence improperly, the result, progress, conduct or any other aspect of any International Match, including (without limitation) by deliberately underperforming therein”.

Charge No.2 - Breach of Code Article 2.1.4, in that Mr Lokuhettige directly solicited, induced, enticed or encouraged Player A to breach Code Article 2.1.1

Code Article 2.1.4 makes the following an offence: “Directly or indirectly soliciting, inducing, enticing, instructing, persuading, encouraging or intentionally facilitating any Participant to breach any of the foregoing provisions of this Article 2.1”.

Charge No.3 - Breach of Code Article 2.4.4, in that Mr Lokuhettige failed to disclose to the ACU (without unnecessary delay, or at all) full details of any approaches or invitations he received to engage in Corrupt Conduct under the Code

Code Article 2.4.4 makes the following an offence: “Failing to disclose to the ACU (without unnecessary delay) full details of any approaches or invitations received by the Participant to engage in Corrupt Conduct under the Anti-Corruption Code”.

3. The summary facts, relied on in support of the Notice of Charge (“the **Notice of Charge**”), were addressed to Mr Lokuhettige as follows:

“1.1 At some point in time from June 2016 onwards, you were introduced to an Indian gentleman named [‘Mr X’]. After you had been introduced to each other, [Mr X] contacted you on a number of occasions.

1.2 You knew [Mr X] to be a match-fixer. In the course of his contact with you, he asked you to approach cricketers to fix matches, including Sri Lankan international cricketers. You accept that you did not report these approaches to the ICC (or anybody else) on the basis that you had retired from cricket.

1.3. On [redacted] September 2017 Sri Lankan international cricketer [Player

A] was playing in a 'Mercantile' match for [redacted] at the [redacted] in Colombo. You were in attendance at that match.

1.4. You know [Player A] as a consequence of him being an ex-colleague of yours at [redacted].

1.5. During a rain stoppage in the match at around 2.30 pm you approached [Player A] and asked him to come out of the dressing room.

1.6. You then suggested to [Player A] that *"there are somethings like this and that if you like you can do"* and said *"You can do something for me and you will get rewarded"* i.e., you approached [Player A] and said to him that he could be rewarded for performing certain acts for you.

1.7. More specifically you informed [Player A] that if he went along with your proposal, you could arrange for [Player A] to play in upcoming Twenty 20 Internationals where he could do such things as give away 15 runs in an over while bowling".

4. Mr Lokuhettige denies the Charges on the bases that (i) the ICC has no jurisdiction over him, and (ii) the charges against him have not been proven on their merits.

PROCEDURAL HISTORY

5. On 12 June 2018, the ICC Anti-Corruption Unit ("**ACU**") conducted its first interview with Mr Lokuhettige following: (i) a report of a corrupt approach originating from the Sri Lankan cricketer, Player B; and (ii) an appearance by Mr Lokuhettige on an Al Jazeera documentary titled 'Cricket's Match Fixers', which was first broadcast on 26 May 2018 and in which Mr Lokuhettige was identified as a player who was prepared to engage in match-fixing.
6. On 14 June 2018, and on 13 November 2018, the ACU conducted subsequent interviews with Mr Lokuhettige.
7. On 3 April 2019, pursuant to the ACU's interviews with Mr Lokuhettige, the ICC sent the Notice of Charge and provisionally suspended him pending resolution of the charges.

8. On 16 July 2019, Mr Lokuhettige responded to the Notice of Charge via his lawyers, (i) denying each of the charges on their merits and/or for lack of jurisdiction, and (ii) requesting a hearing on his application to have his provisional suspension lifted.
9. On 5 September 2019, the matter was referred to the Chairman of the ICC Code of Conduct Commission (“**Chairman of the CCC**”) with a request for a directions hearing to resolve procedural issues between the parties relating to disclosure and the determination of Mr Lokuhettige’s challenge to jurisdiction and his provisional suspension.
10. On 12 September 2019, a directions hearing took place, following which the Chairman of the CCC received short written submissions on behalf of the respective parties.
11. On 20 September 2019, the Chairman of the CCC ruled that Mr Lokuhettige qualified as a Participant (as defined by the Code) and so was bound by the Code and that the ICC had jurisdiction over him under the Code. The Chairman declined to lift the provisional suspension on the basis that the integrity of the sport could be seriously undermined if Mr Lokuhettige, having been properly charged, was permitted to continue to participate until the charges against him were finally resolved.
12. On 9 October 2019, the parties agreed a procedural timetable for exchange of briefs up to a hearing, which timetable was approved by the Chairman of the Tribunal on 10 October 2019. The timetable was subsequently adjusted with the concurrence of all parties as a result of the impact of Covid-19.
13. By email correspondence dated 30 September and 6 October 2020, the Tribunal invited the parties to make submissions on specific questions relating to the issue of jurisdiction.

Q1. On what basis is a Participant as therein defined bound by the ICC Code (assuming the absence of an express agreement by the Participant to be so bound)?

Q2. On what basis is a Participant as therein defined bound by the SLC Anti-Corruption Code (“**SLC Code**”) (assuming the absence of an express agreement by the Participant to be so bound)?

Q3. Does the answer to questions 1 and 2 vary depending on the type of Participant, and, if so, on what basis?

Q4. On what basis did the ICC have jurisdiction over Mr Lokuhettige at the times when it is alleged that the offences with which he is charged took place?

14. The parties made written submissions which were supplemented by their oral submissions at the hearing. The written submissions of the ICC were dated 7 October 2020; the written submissions of Mr Lokuhettige were received on 24 November 2020.

15. The hearing took place on 27 November 2020. Due to time constraints the parties were invited to present their closing arguments in writing. Both sides presented closing arguments on 7 December 2020 with the ICC submitting its Reply on 11 December 2020, and the Counsel for Mr Lokuhettige submitting his Reply on 13 December 2020.

JURISDICTION

MAJORITY OPINION ON JURISDICTION

16. Two of the members of the Tribunal, Michael Beloff QC (Chairman) and The Honourable Mr Justice Winston Anderson (“**the Majority**”), find that the ICC has established jurisdiction over Mr Lokuhettige. The other member, Simon Copleston, dissents from that finding. The Tribunal’s decision is therefore a decision of the Majority on the issue of Jurisdiction.

17. The threshold question is whether, when, and for how long Mr Lokuhettige was bound by the Code. The answer to that question is to be found in the application of general legal principles but requires consideration of two preliminary matters: (i) the status and powers of the ICC; (ii) the system of law which determines the ICC’s jurisdiction.

Status and powers of the ICC

18. The ICC, incorporated in the BVI, is a company limited by guarantee.

19. The ICC's Memorandum of Association states, so far as material:

"5. The ICC is the international federation responsible for the global governance of the sport of cricket and, in that respect, is established to pursue the following objects (working in conjunction with its Members):

...

(F) to preserve the integrity and ethics of Cricket and to promote fair play, including (without limitation) by providing match officials for international matches, and by adopting anti-doping and anti-corruption rules and other appropriate codes of conduct and ensuring that such rules and codes are enforced uniformly throughout the sport, including at all Cricket events sanctioned by the ICC and its Members ...".

["Cricket" is defined as "the sport of cricket; including all current and future formats, the variations and/or derivatives of the sport modified or derived from its traditional form, irrespective of the number of players involved, the length of the match, or the type of venue or playing surface or equipment used, save as otherwise decided from time to time by the Board of Directors"]

20. The ICC's Articles of Association prescribe obligations binding upon its members which are national cricket federations. The Articles of Association state, so far as material,

"2.4 Obligations of Members

Each Member must at all times:

(A) respect and further the objects of the ICC set out in clause **Error! Reference source not found.** of the Memorandum of Association;

...

(F) adopt, implement and enforce within its Cricket Playing Country a set of regulations (including anti-doping and anti-corruption regulations) that are consistent with the Memorandum of Association, these Articles of Association...”

21. The ICC is a private, not a public authority. It has no statutory powers; nor can its authority over any persons, legal or natural, be derived simply from its own claim to enjoy such authority. It must be derived from some other source.

The system of law which determines the ICC jurisdiction

22. The threshold question must be answered by reference to a single system of law; otherwise, a different answer might in theory be given depending on the citizenship of the player whose case was under scrutiny, which would be destructive of the universality of the application to which Code necessarily aspires. As was said in *Foschi v FINA CAS 96/156*, para 10.2.4: “An international federation deals with national federations and athletes from all over the world and it has to treat them on an equal basis. It therefore has to apply the same law to all of them. It is unacceptable that, based upon the same facts, different results might be reached depending on the law applied.” This is a proposition which has been previously accepted by a predecessor ICC Tribunal (*ICC v Ikope*, 5th March 2019, para 6.16).

23. It follows that the Tribunal must therefore reject Mr Lokuhettige’s principal submission, that the question of ICC jurisdiction and charges against him—must be adjudicated upon in accordance with Sri Lankan law applied under the Sri Lankan regime, for the same reason that similar arguments were rejected in the case of *ICC v Zoysa*.

Application of general legal principles

24. Applying the developing concept of the *lex ludica* which embraces “general principles of law drawn from a comparative or common denominator reading of various domestic legal systems” (see *AEK Athens v UEFA CAS 98/200*, para 156) the most obviously appropriate test would be to identify a relationship between the player and

the ICC arising from a contract, express or implied.¹ This test is vouched for by the jurisprudence, especially of the Court of Arbitration for Sport (“CAS”), and the final forum for appeals against specified decisions made under the Code.² It reflects the fact that the concept of contract is embedded in most, if not all, modern systems of law and certainly those of the member federations of the ICC. The Victorian jurist Sir Henry Maine in Chapter V of ‘Ancient Law’, characterized the evolution towards progressive societies as a passage from **status** (an ascribed position) to **contract** (a voluntary stipulation).

25. Contracts can be either express or implied by conduct (see Chitty on Contract 33rd ed para 1-111). A player could become bound to the Code in one of three ways: (i) by agreement with the ICC to be bound by the Code (“**binding by agreement**”); (ii) by agreement with a member federation of the ICC which itself requires the player to be bound by the Code (“**binding by incorporation**”); and/or (iii) by participation in the sport, the subject matter of the Code (“**binding by participation**”). Instances (i) and (ii) are examples of an express contract, and (iii) is an implied contract.
26. The concept of binding by agreement requires no elaboration. The ICC do not rely upon any such agreement and the Majority is satisfied that there is none which binds Mr Lokuhettige to the Code. (By contrast SLC is bound by the Code pursuant to its contract of membership with the ICC).
27. The concept of binding by incorporation is broadly and usefully explained in Lewis and Taylor, Sport Law and Practice 4th ed (“LT4”), para D1.15, where the notion of sports governing bodies is represented by the acronym SGB:

“Where there is no direct membership relationship with individuals, governing bodies may be able to exercise jurisdiction over them through its members, in one of two ways. First, it may require its members to act in a particular way in relation to such individuals. Thus in the context of governing

¹ It is to be noted under Article 7.5.3 of the Code that English law is designated as the governing law for appeals to CAS as well, as under Article 11.5 the law according to which the Code is to be construed. In terms of contract law English law is not discrepant with general principles of law.

² Code Article 7.1.

bodies that are made up of other governing bodies, the body at the top of the pyramid structure may be able to require the body below it to exercise jurisdiction over its members, and so on down through to the lowest level of the pyramid, with each level being subject to the control of the one above. Secondly, the SGB may require its members (clubs) to make it a condition of their own contracts with their members (individuals) that they submit to the jurisdiction of the SGB. Depending on the facts this could involve two separate contracts and no direct contractual relationship between the individual and the SGB, or it might possibly involve the creation of a direct contract by the club for these purposes acting as agent for either the individual or the SGB. Either way, jurisdiction is effectively conferred.”³

28. The ICC has not relied upon the concept of binding by incorporation and it has not been the subject to debate between the parties. The Majority will therefore abstain from any detailed consideration of it save to note that:

- (i) It was at all material times (and is) the duty of SLC as a member federation of the ICC to implement within its own jurisdiction a set of regulations which include a provision that persons who fall within the definition of Participant in the Code are bound by the Code (“the **Members duty**”).
- (ii) SLC fulfilled the Members duty when it enacted its 2016 Code, effective as from 1st November 2016 which said expressly at Article 1.6 “.... a participant shall also be bound by the anti-corruption rules of

³ The following observations of Mr Justice Choudhury in *Tod v Swim Wales* [2018] EWHC 665 (“Swim Wales”) at paras 93 and 100 appear apposite at this juncture: “[93] It is common ground that there are no documents in this case that would suggest the existence of any express agreement between the Claimant and the Defendant from which an intention to create legal relations could be assumed, and any contract must therefore be implied from the parties’ conduct: *Modahl* at [102]. There was, however, an express agreement between the Claimant and the Club. The Club’s constitution imposes an obligation on the Claimant to comply with its rules. However, it also requires the Claimant to comply with Swim Wales’ Rules. The obligation on the Claimant to comply with the Swim Wales’ Rules is an obligation owed to the Club; it is not one that is owed to Swim Wales. Moreover, the Club is required to ensure that the Claimant complies with the Rules as part of the Club’s obligation to Swim Wales as an affiliated member. The mere fact that the Claimant agrees to abide by the Rules does not necessitate a contractual relationship between them ... [100] It is not necessary to imply a contract because the two-tier structure described above fully explains the relationship between the Claimant, the Club and Swim Wales.”

the ICC” (Participant being defined in identical terms to that in the Code).

- (iii) SLC had by contrast not fulfilled the Members duty at the time when Mr Lokuhettige signed the SLC Contract since the SLC Code in its then incarnation stated only at Article 1.6, “it is acknowledged that certain Players...may also be subject to the anti-corruption Rules of the ICC...and that the conduct of such players may implicate...such other corruption rules that may apply”. It did not on its face bind any Players to the Code, but merely informed them that they might be so bound in some other way.
- (iv) Any issues over jurisdiction such as have arisen in the present case would be avoided if ICC ensured that Member Federations at all material times fulfilled the Members duty.

29. The concept of binding by participation is described in LT4 para C3.7 referring to the World Anti-Doping Code (“WADC”) (footnote omitted):

“the anti-doping rules are now so well-known that athletes' claims of ignorance are generally given short shrift. Furthermore, the hearing panel will not generally require proof of a specific written agreement to abide by the rules, signed by the athlete. **Instead, it will readily infer acceptance of the rules and agreement to abide by them simply from the athlete’s participation in the sport.**” (Majority’s emphasis)

30. This observation is, in the Majority’s view, applicable, *mutatis mutandis*, to the Code which shared the objective of the WADC, namely, to ensure fair competition and create a level playing field in sport.

31. The jurisprudence of CAS further supports the authors’ observation, (see *Dominguez v FIA*, CAS 2016/A/4772, at para 88: “The Panel agrees with the FIA that the CAS jurisprudence is clear that all those participating in organised sport are deemed to know that, in order to ensure a level playing-field for all, there are strict anti-doping rules that must be complied with, and they are deemed to be bound by those rules whether or not they have ever explicitly signed up to them or even read the rules’”). It

was also said in *Dorofeyeva v ITF*, CAS 2016/A/4697 (“**Dorofeyeva**”) at para 84 that “[...] a tacit declaration of will may be deduced from a conduct of a party. The execution of a contract requires two concurrent declarations of intent, i.e. an offer by one party and an acceptance by the other party. Absent any specific provision to the contrary, the declaration of intent may either be expressly or tacitly”. The Majority note that an appeal from a Tribunal decision would, pursuant to the Code Article 7, lie to CAS which would be likely to apply the same approach.

32. The Majority for its part would accept the analysis, quoted below, of Alan Sullivan QC, a senior CAS arbitrator, writing extra-curially (“the **Sullivan analysis**”). (It was applied by Professor Ulrich Haas, another person of similar stature, in his decision as a sole arbitrator in *Dorofeyeva*):

“Even where there is no traditional offer and acceptance or where a person has not signed a document acknowledging to be bound by the rules, parties may become bound by a contract when they intend and contemplate becoming bound by such a contract. This is an objective inquiry that needs to be answered idiosyncratically on the facts of each case.

In the case of a contract comprising or including anti-doping rules, the need for the conduct of the parties to be capable of proving all of the essential elements of an express contract necessarily means that the relevant conduct must show, on the balance of probabilities, that a person [i] has agreed to participate in the particular sport [ii] at least in the knowledge that anti-doping rules exist and are intended to apply in respect of such participation. Such conduct may be hard to prove absent evidence of attendance at meetings or the like where the anti-doping policy was mentioned or discussed, or evidence of the notoriety of the existence of such rules in the sport. It is notorious, for example, that anti-doping rules, the Code, apply in respect of Olympic sports. It would be easy to infer that an athlete or support person who participates in such a sport was aware that he or she was doing so in circumstances where anti-doping rules applied in respect of such participation.”

33. In so far as English law is directly or indirectly applicable the key elements of a contract are present whether the contract is express or implied (see Chitty on Contracts 33rd, para 1-111). However, in the Majority's view, within the Sullivan analysis "the basic structure for a contract is...readily identifiable". In *Modahl v BAF* 2001 EWCA 1447 Mance LJ (as he then was) identified them as follows, at para 100: "For there to be a contract, there must be (a) agreement on essentials of sufficient certainty to be enforceable, (b) an intention to create legal relations and (c) consideration. Both of the first two requirements fall to be judged objectively" (see to like effect Latham LJ at para 50). While in *Modhal* Latham LJ said, that, "the IAAF bearing in mind its purpose and constitution was unlikely to have intended to create contractual relationships with individual athletes in the absence of an express contract" (para 40, obiter). the Sullivan analysis has been applied by CAS to such different global sports regulators as the FEI, FIA and ITF⁴.
34. In the Majority's view the contract implied by conduct to obey a set of rules promulgated by a sports governing body objectively (a) evinces or contains an agreement on essentials of sufficient certainty to be enforceable i.e. those set out in the rules, and (b) an intention to create legal relations with the participant in the sport; the rules cannot be relegated to the status of "merely convenient administrative machinery governing how the parties interact with one another": *Swim Wales* at para 83.
35. Furthermore, there is a benefit and detriment to each party hence supplying any requisite consideration. Adapting the analysis of Latham LJ in *Modahl* at para 50, the benefit to the player is that he or she knows that every player competing will be subject to the same rules, and that to remain entitled to compete, both nationally and internationally, he or she must comply with the Code. The ICC accepts the burden of administering the Code and the benefit of having recognised players competing both in national and international events. Adapting the alternative analysis of Mance LJ in *Modhal* at para 103, consideration exists in the player's submission to the Code and the ICC jurisdiction, in the ICC's agreement to operate the Code and to permit the

⁴ The Constitution of the IAAF (since 2019 renamed World Athletics) was substantially rewritten in 2017.

player to compete in accordance with it and in both parties' agreement on the procedures for resolution of any disputes contained in the Code. Both analyses, albeit differently articulated, lead to the same conclusion.

36. The benefits that a player such as Mr Lokuhettige obtains from ICC' s administration of the sport which, *inter alia*, ensures that the Code applies to all players subject to it, provides sufficient consideration to validate the imposition upon him of the burdens of the Code for a limited period after his playing days are over (as to which see below para 43).

37. The Majority would emphasize at this juncture the following two points:

(i) awareness, whether deemed or actual, of rules promulgated by a body such as the ICC does not *ipso facto* amount to subjection to them. It is a *sine qua non* of such subjection that awareness is accompanied by participation in the regulated sport; and

(ii) ignorance of the content of such rules will not provide a defence for a breach thereof (see *FEI v Stroman*, CAS 2013/A/3318, para 79: "[...] it is part of the *lex ludica* that athletes [...] who are subject to particular anti-doping regimes of their chosen sport must themselves take steps to familiarise themselves with the content of those regimes, even where the rules, being international, are not in the athlete's mother tongue"); *I. v FIA*, CAS 2010/A/2268, para 93: "[...] it is a well-known facet of anti-doping law that every athlete has the duty to be acquainted with the contents of the Prohibited List and to ensure that no prohibited substance enters his or her body. In accordance with the legal principle *ignorantia legis neminem excusat*, an athlete may not escape anti-doping liability merely because he or she was unaware of the content of anti-doping rule").

38. The ICC's key contention in its reliance upon binding by participation is to be found in its written closing submissions, para 1.2.2: "Mr Lokuhettige became bound by the 2014 ICC Code when he first participated in a Domestic Match on or after November

2014, being the date on which the 2014 ICC Code came into effect. In other words by virtue of his first participation in a Domestic Match on or after 11 November 2014, he entered into an implied agreement to be bound by the terms of the 2014 ICC Code (to their full force and effect)", citing in a supportive footnote Code Article.1.5 "Each Participant is automatically bound by this Anti-Corruption Code as soon as he/she becomes a Participant".

39. In the Majority's view, for reasons already explained in paragraph 21 above the ICC cannot rely for this purpose on the language of the Code only. The answer to the question whether one is or is not a (small p) participant to a degree which, in accordance with the Sullivan analysis, binds one to the Code in the first place may overlap with the answer to the question whether one is a (capital P) Participant as defined by the Code but the two questions are conceptually distinct. In summary, in order for the ICC to find a player bound by the Code it must satisfy two conditions; first that the player is participating in a match under the aegis of the ICC, second that the player satisfies the definition of Participant in the Code.
40. The Majority would nonetheless accept that by participating in his last domestic match, i.e., the MSC match, Mr Lokuhettige became bound by the Code. The domestic match was a match for which the ICC in the exercise of its powers under the Memorandum could make and had made provision. There are two spheres in the global world of cricket; those over which the ICC has exercised its powers i.e., international and domestic matches as defined in the Code, and those over which it has not done so e.g., village cricket. As long as a player participates in his sport in the latter sphere, he is not subject to the duties imposed by the Code. However, if he crosses the boundary between the two spheres and participates in the area of the sport made subject to the Code he is subject to the obligations in it.
41. The Majority recognise that the ICC has created a division between those matches (domestic) in which a defendant has allegedly behaved corruptly and it is for the national federation to exercise its disciplinary power and those matches (international) in which a defendant has allegedly behaved corruptly and it is for the ICC to exercise its disciplinary power. However, what in its view is material is that the ICC can only create that division in exercise of its powers globally over the

spectrum of professional, as distinct from amateur cricket.

42. By way of corollary, it is not, in the Majority's view, material that Mr Lokuhettige would, the Article 1.7 exception apart, be subject to the disciplinary jurisdiction of SLC, and not that of ICC in respect of such a domestic match. The ICC does not contend otherwise. The ICC deploys Mr Lokuhettige's participation in a domestic match in 2016 only as the trigger to give it jurisdiction over his alleged corruption in respect of international matches in 2017.

43. It follows, in the Majority's view, that if Mr Lokuhettige was, as it finds, bound by the Code:

- (i) he was so bound by its anti-corruption duties in Article 1.5, in accordance with its express terms at the time of his alleged offences in relation to an International match in 2017, as being as per Article 4.1.1:
"a(ny) cricketer who is selected (or who has been selected in the preceding twenty-four (24) months) to participate in an *International Match* and/or a *Domestic Match* for any playing or touring club, team or squad that is a member of, affiliated to, or otherwise falls within the jurisdiction of, a *National Cricket Federation*; and
- (ii) he was so bound in terms of the duration of his subjection to the Code, by Article. 1.9 which provides:

"Each *Participant* shall continue to be bound by and required to comply with the *Anti-Corruption Code* until he/she no longer qualifies as a *Participant* (the "**End Date**"). Notwithstanding the foregoing, the ICC shall continue to have jurisdiction over him/her under the *Anti-Corruption Code* after the *End Date* in respect of matters taking place prior to the *End Date*; and he/she shall continue to be bound by and required to comply with this *Anti-Corruption Code* after the *End Date* with respect to the investigation, prosecution and adjudication of such matters."

44. The Majority does not suggest that the ICC's rule making power is infinite. It

acknowledges that ICC's rule making power must, *inter alia*, be consistent with its objectives, as set out in its constitution. Furthermore, even in the absence of a contractual relationship, *a fortiori* where such relationship subsists, a person such as a Player whose so-called right to work had been adversely affected by decision of a sports governing body such as the ICC flawed by, for example, lack of proportionality or unjustifiable restraint of trade, might be able to engage a Court's supervisory jurisdiction (see *Bradley v Jockey Club* 2004 EWHC 2164 QB, at para 75). However, the rules introduced by 2014 and here relied on by the ICC were so obviously supportive of the ICC's basic and benign objectives i.e., to defeat corruption in cricket, that they cannot be impugned as *ultra vires*.

45. Finally, in the context of jurisdiction, Mr Lokuhettige had, between 2005 and 2013, participated in international professional cricket regulated by the ICC. It was and is well known - in Sullivan's epithet, notorious - that anti-corruption rules in cricket applied to such cricket during that period; nor has Mr Lokuhettige ever asserted ignorance of that fact. Indeed, on at least two occasions, 8 August 2012 and 16 September 2013, he attended ACU education sessions relating to integrity and corruption within cricket - an ICC programme.
46. Whether or not Mr Lokuhettige was aware of the fact that the 12-month period before he ceased to be a Participant under the 2012 Code had been elongated to a 24-month period under the (2014) Code, is immaterial. The 2014 Code was a public document and easily accessible. Mr Lokuhettige cannot, as a matter of principle, plead ignorance of the 2014 Code's new provisions (see para 37 above).
47. For the reasons set out above the Majority finds that the jurisdiction of the ICC (and of the Tribunal itself) as relates to the Charges is established.
48. Whilst agreeing with the foregoing analysis that grounds jurisdiction of the ICC in the implied contract model, one member of the Majority, Mr Justice Anderson, considered that ICC jurisdiction is alternatively established by a more direct route which did not require the satisfaction of the elements of the classical contract. Pursuant to its lawful and indeed laudable objective of global governance of cricket to preserve the integrity of the game, the ICC adopted the Code for the Conduct of Participants. This was in

the recognition of the fact that if public confidence in the authenticity of the game was undermined, “then the very essence of cricket will be shaken to its core”⁵. Participants, as defined under the Code, are persons who could reasonably be seen by the public as being officially associated with cricket organised by the ICC or its member federations. The proportionality between the scope of definition of Participant and the suppression of corruption was key to its likely acceptability under Public International Law and to public policy imperatives in respect of issues such as restraint of trade under national law. In the latter regard it is noteworthy that national cricket federations are required to adopt, implement, and enforce within their individual countries, the various codes of conduct adopted by the ICC.

49. It was the responsibility of the ICC and its member federations to ensure that persons were made aware of who qualified as a Participant, as defined in the ICC Code, and that such persons were aware of and did not object to the responsibilities of Participants as outlined in the Code. Where a person was aware of and did not object to the responsibilities of becoming a Participant, and indeed participated in the game of cricket in the manner referred to in the Code, that person came under a participation obligation to discharge the responsibilities spelt out in the Code. In such a case, as with the tiered approach adopted by Chaudhury J in *Swim Wales*, there was no need to imply a contract between the global sports governing body and the individual Participant. This alternative analysis is, in the view of the Member who subscribes to it, a more realistic description of the legal relationship between a sports governing body at the global level and an individual, than is the contract model.
50. In the present case there was no suggestion that Mr Lokuhettige was unaware of the ICC definition of Participant or of the obligations attended upon being a Participant. Mr Lokuhettige expressly stated that this argument was no part of his case. Nor was there any contradiction of the suggestion that Mr Lokuhettige, by his voluntary act, played in the domestic match in SLC’s first class competition on 18 February 2016, which, as Mr Lokuhettige knew, brought him within the ICC Code’s definition of Participant. Mr Lokuhettige also knew that SLC had agreed and was obliged to implement the ICC Code. He thereby knowingly brought himself within the ambit of

⁵ Code Article 1.1.2.

the ICC Code and came under a participation-obligation to comply with the responsibilities set out in the Code.

MERITS

51. There was unanimity among the members of the Tribunal in relation to the Merits.
52. The ICC's case had three main elements
 - (i) Mr Lokuhettige was the recipient of corrupt approaches by a known match-fixer, Mr X which he failed to report contrary to Code Article 2.4.4.
 - (ii) Pursuant to those approaches Mr Lokuhettige himself approached Player A a Sri Lankan international cricketer to assist in fixing upcoming T20 international matches in 2017 contrary to Code Articles 2.1.1 and 2.1.4.
 - (iii) Mr Lokuhettige himself approached Player B, another Sri Lankan international cricketer, asking him to fix a T10 Cricket League that took place in Sharjah, UAE, in December 2017.
53. The allegations at (a) and (b) formed the basis for the substantive charges; the allegation at (c) forms the basis for a substantive charge in other forthcoming proceedings and is relied on in the present proceedings as evidence of propensity in respect of allegation (b).
54. The evidence in support of the above elements was contained in (i) transcripts and recordings of interviews carried out by the ACU with Mr Lokuhettige, extracts of which are set out in Appendices to this decision; and (ii) the witness statements and oral evidence of Player A and Player B.
55. The interviews with Mr Lokuhettige, referenced at paragraph 54(i) above, contain on their face an admission of corrupt approaches made to him by Mr X coupled with an admission that he failed to report those corrupt approaches.
56. Player A's evidence, in summary, was that:

- (i) Mr Lokuhettige made a corrupt approach to him on [redacted] September 2017 while he was playing in a 'mercantile' match for [redacted] at the [redacted] in Colombo. He and Mr Lokuhettige had previously been colleagues at [redacted].
- (ii) During a stoppage in the match, he spoke to Mr Lokuhettige outside the stadium where Mr Lokuhettige informed him that he (Mr Lokuhettige) could get him into upcoming Twenty20 International Matches if he did something in those matches, for example by conceding 12-15 runs in an over when bowling.
- (iii) Mr Lokuhettige said he would be rewarded for doing this, and he indicated the man who would be rewarding him was sitting in Mr Lokuhettige's car. He later recognised that man as the person the ACU knows as Mr X.

57. If accepted, Player A's evidence supports the charges brought under Code Articles 2.1.1 and 2.1.4, in that it evidences (i) Mr Lokuhettige's dealings with Mr X as part of his agreement/effort to fix with Mr X and through that his attempted effort to get Player A to agree to fix or be party to an effort to fix, and (principally) (ii) his soliciting, inducing etc. of Player A to fix an International Match(es).

58. Player B's evidence in summary was that:

- (i) He first received a corrupt approach from Mr Lokuhettige on 19 November 2017, in which Mr Lokuhettige asked him to fix in the T10 Cricket League that took place in Sharjah, UAE, in December 2017. Perturbed by this approach, he reported it to (among others) his coach, Coach A, who suggested that if it happened again Player B should record the call.
- (ii) Mr Lokuhettige did call him again, and he did record that call, which clearly evidences a corrupt approach being made by Mr Lokuhettige.

59. Player B's evidence, if accepted, is evidence of a propensity of Mr Lokuhettige to seek to fix matches.

60. It is common ground that - on the premise that the Code applies - the burden of proof

is upon the ICC to make good its case⁶.

61. It is asserted by Mr Lokuhettige that the standard of proof is 'beyond reasonable doubt'. The Tribunal rejects this assertion which is inconsistent with the clear language of the Code that requires only proof to the lower standard of comfortable satisfaction.
62. By way of preliminary argument Mr Lokuhettige asserts that the charges against Mr him are vague. Thus Paragraph 2.e of the Answer brief states: 'Purported charges made against Mr. Lokuettige are absolutely vague, as such cannot be maintained'.
63. The Tribunal is comfortably satisfied that the charges were set out with sufficient clarity in the Notice of Charge. No particulars of that document were sought and Mr Lokuhettige was able to respond to them with detail in his Answer. This defence itself is vague and unparticularised.
64. There are four main elements in Mr Lokuhettige's defence to the substance of the charges. First, that the recordings made of his interviews must be ignored because they have been tampered with ("**tampering**"). Second if (*quod non*) the recordings are a correct record his 'admissions' during interview, they are unreliable for a variety of interlinked reasons ("**inadmissibility**"). Third, he was the victim of a conspiracy against him involving the ICC and Sri Lankan politicians of which a key part was to persuade Player A and Player B to lie in saying that they received corrupt approaches from him ("**conspiracy**"). Fourth, the evidence of both Player A and Player B, where inconsistent with his own, is in any event unreliable and should be rejected and, by way of corollary, that his evidence of Mr Lokuhettige should be preferred and accepted ("**weight of evidence**").

⁶ See Code Article 3.2.1 (Unless otherwise stated elsewhere in the Anti-Corruption Code, the burden of proof shall be on the ICC in all cases brought under the Anti-Corruption Code and the standard of proof shall be whether the Anti-Corruption Tribunal is comfortably satisfied that the alleged offence has been committed, bearing in mind the seriousness of the allegation that is being made. The standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt').

Tampering

65. The Tribunal can find no basis for this serious allegation of misconduct against the ICC. Indeed, none has been identified. Mr Lokuhettige does not say which parts of the recordings/transcripts have been tampered with and to what effect, nor does he suggest how any tampering might have occurred⁷. Mr Steven Richardson, Coordinator of Investigations for the ACU, has convincingly addressed in his testimony, the recordings, the transcripts, and their accuracy. The Tribunal is satisfied that there was no conceivable coincidence of both motive for and opportunity to tamper on the part of any person involved in the recording or transcription and finds that the audio and video recordings are authentic and accurate, as are the transcripts made from them.

Inadmissibility

66. Paragraphs 2.g. to 2.i of the Answer Brief state:

“g. Further Mr. Lokuhettige states that he was unaware as to the scope of the interview conducted by the representatives of ACU wherein he was questioned in a language which is not his mother tongue and therefore was unable to apprehend the grave and serious nature of the questions which were put to him. Fact that he was legally represented cannot in anyway mitigate the circumstances as Mr. Lokuhettige states that even the attorney who represented was a foreign national, he also has serious reservations of several discussions that are supposed to have transpired in the English language between an Australian legal representative and an English ICC official, none of which he was able to fully comprehend;

h. Further Mr. Lokuhettige raises the objection that the said proceedings based on alleged interviews held by the ICC ACU with Mr Lokuhettige were

⁷ Mr Lokuhettige claims that the name ‘[Mr Y]’ was deliberately left out of the transcript of Player B’s recording of the corrupt approach Mr Lokuhettige made to him. The Majority cannot attribute any significance to this minor omission in the transcript, given that there would be no apparent purpose in such omission and accepts ICC’s denial that it had any corrupt dealings with Mr Y, of which Mr Lokuhettige for his part has supplied no evidence at all.

conducted without providing him the services of a competent Attorney-at-Law who was conversant with the mother language of Mr Lokuhettige;

i. Alleged admissions said to have been made by Mr Lokuhettige have been made under the said circumstances, thus not admissible against him ...”

67. It does not appear to be disputed that in point of law admissions are capable of constituting admissible evidence in support of the charges. Article 3.2.1 of the Code states expressly that they are. The Tribunal must therefore evaluate the various reasons advanced as to why, in point of fact, it should not accept at face value the apparent admissions.

68. Mr Lokuhettige avers - and the Tribunal accepts - that English is not his native language. However:

- (i) Mr Lokuhettige does not claim that he has no knowledge of English and the transcript of interviews is overall at odds with any such claim.
- (ii) The same transcripts show that at no stage did Mr Lokuhettige ask for an interpreter or complain that he did not understand a question. For his part Mr Richardson considered that Mr Lokuhettige had sufficient command of English.
- (iii) Mr Lokuhettige was at first legally represented at ACU interviews by David Avery, a lawyer whose services he retained himself with no involvement from the ICC and who for his part made no such request for an interpreter either (Mr Lokuhettige had been given a two-day break between interviews in order to obtain legal advice).
- (iv) Mr Lokuhettige claims that he had to communicate with Mr Avery through a friend. However, there was no evidence of the presence of any such friend during either of Mr Lokuhettige’s interviews at which he was assisted by Mr Avery.
- (v) At Mr Lokuhettige’s third interview with the ACU, he dispensed with the services of a lawyer, and participated in English without apparent difficulty.
- (vi) Mr Lokuhettige was provided with full and clear warnings from the ACU representatives on each occasion that he was interviewed, about the purpose

of the interviews and what was at stake for him and on each occasion he confirmed that he understood the warning (see Appendix).

69. There is no allegation that the ACU representatives acted in an oppressive manner towards Mr Lokuhettige and no evidence that they acted oppressively in a manner which might under section 76 of the (UK) Police and Criminal Evidence Act 1984, if applicable by analogy⁸, render unreliable any admission made by him. To the contrary, the evidence available from the video and audio recording shows that the ACU acted in reasonable appreciation of his welfare. To the contrary, the evidence available from the video and audio recording shows that the ACU acted in reasonable appreciation of his welfare.

Conspiracy

70. Mr Lokuhettige refers to an “entire ill motivated orchestration by the ICC ACU officials against Sri Lankans (in collusion with others here)”. These allegations of collusion are serious ones which would need compelling evidence to support them. In the absence of any such evidence the Tribunal rejects them.
71. Whereas Mr Lokuhettige asserts that Player A and Player B have each entered into a ‘deal’ with the ICC in order to escape being charged with failure to report. Mr Richardson has confirmed that the ICC has not entered into any such sort of deal with either Player A or Player B, or any other quid pro quo. The Tribunal accepts this denial. In particular, but not only, because there is not a scintilla of evidence to the contrary. It would comment that such deal would not only have been unethical but would, had it been exposed, potentially destructive of the reputation of the ACU.
72. The Tribunal finds that this limb of the defence is flawed by an inherent lack of logic. Mr Lokuhettige cannot at one and the same time deny that any corrupt approaches were made to him by Player A or Player B and assert that each failed to report such approaches.

⁸ This provides that in English criminal proceedings a defendant’s confession may be offered against him or her unless it ‘was or may have been obtained (a) by oppression of the person who made it; or (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof’.

73. Furthermore, even assuming in Mr Lokuhettige's favour that there was some politicisation of Sri Lanka cricket, there is no evidence whatsoever that the ICC were dancing to the tune of any faction. Mr Richardson has clearly explained the nature of the ACU's involvement in Sri Lankan cricket. To the extent that it is relevant at all, Mr Richardson has sufficiently rebutted the suggestion that his conduct has been seen by SLC as detrimental to Sri Lanka and its image as a cricketing nation. SLC has in fact engaged the ACU to assist it with the anti-corruption efforts at the ongoing Lanka Premier League⁹.

Weight of Evidence

74. This defence has also several elements which the Tribunal will consider in sequence. It would, however, preface its observations on these elements by noting that the Tribunal has, respectively, read and seen the transcripts and video recordings of interviews or recorded calls with Mr Lokuhettige. It also has written evidence from Player A and Player B for the ICC, and Mr Lokuhettige himself, and had moreover the opportunity to assess their credibility at the hearing. With that advantage it essentially accepted the evidence of the former two and rejected the evidence of the latter.

75. In the Tribunal's view Player A's evidence was unshaken by his cross-examination:

- (i) Player A was clear that he had not entered into any kind of 'deal' for his evidence as alleged by Mr Lokuhettige.
- (ii) Insofar as a translation issue was identified with one message exhibited to Player A's statement, Player A was not responsible for that translation error.
- (iii) That error obviously cannot undermine the fact that Mr Lokuhettige actually sent the messages exhibited to Player A's statement.
- (iv) Likewise, even if Player A misremembered whether or not he had previously played for Sri Lanka against Bangladesh or Australia earlier in 2017, a faulty recollection is not the same as a lie. The challenge goes to the periphery, not the core of his evidence which concerned the corrupt approach made to him by Mr Lokuhettige.

⁹ <https://www.dailynews.lk/2020/11/23/sports/234232/slc-and-icc-anti-corruption-units-monitor-lanka-premier-league>.

(v) More material is the consistency of Player A's description of Mr X had a 'big fatty face. Plump face', with that of Mr Lokuhettige's own description in interview of Mr X 'a very big and fatty guy'.

76. Paragraph 2.d of the Answer brief states: "Purported witness statement said to have been given by [Player A] is an Undated document without satisfying the minimum legal compliance thereof and had been hurriedly prepared for the purpose of this action".

77. The Tribunal finds convincing the several responses made by ICC to this somewhat technical argument:

- (i) The undated witness statement of Player A is signed (and was received by the ICC on 1 November 2019).
- (ii) Player A had previously provided evidence to the ACU by way of interviews in June and November 2018 (following the Al Jazeera documentary).
- (iii) The lack of date does not undermine its evidential value. There is no requirement in the Code for a statement to be dated.
- (iv) Player A confirmed the accuracy of its content at the hearing.

78. Player B's evidence was equally unshaken. He too clearly confirmed that he had not reached any deal with the ICC for his evidence. As to the fact that the transcript had not picked up is reference to '[Mr Y]' in the recoding, already referred to at para 65 above is essentially criticism of the transcriber, not the integrity of the recording, still less of Player B's evidence.

79. Furthermore, the Tribunal rejects Mr Lokuhettige's evidence where inconsistent with that of Player A and Player B, especially when contrasted by his own admissions in the interviews upon the reliability of which the Tribunal has already commented, for the following main reasons:

- (i) Mr Lokuhettige concedes he would have been at the [redacted] stadium on [redacted] September 2017, when Player A says he made the corrupt approach.
- (ii) Mr Lokuhettige's claim that his approach to Player A was merely in respect of Player A's possible involvement in the 'Arabian Cricket League', was at odds with the words he used.

(iii) Mr Lokuhettige has also failed to provide an explanation in respect of what appears to be a missing message either sent to or received from Player B on 19 November 2017 the date of his first corrupt approach to the latter.

(iv) Mr Lokuhettige also failed to provide a convincing explanation as to what he meant by the words 'invited the trouble' in the message he sent to Player A on 2 June 2018, following the broadcast of the Al Jazeera documentary. In the Tribunal's view 'trouble' could only be invited if the discussion there recorded was other than innocent.

(v) The suggestion by Mr Lokuhettige that he was not discussing corrupt 'approaches' in his interviews with the ACU is unrealistic given his reference to his awareness that it was a 'risk' to approach players.

80. The Tribunal is comfortably satisfied that the corrupt approach to Player A was part of Mr Lokuhettige's wider dealings with Mr X, in light of Mr Lokuhettige's admissions to receiving corrupt approaches from Mr X, including in relation to another Twenty20 International in September 2017 (which admission itself also supports the Article 2.4.4 charge).

81. Mr Lokuhettige's failure to report Mr X's corrupt approach is admitted. His defence is that he was under no obligation to report because he had retired from cricket. The Tribunal rejects this defence because, as it the Majority already concluded, he was still a Participant and still bound to comply with the reporting obligations under the Code at the time of the approach.

DISSENTING OPINION ON JURISDICTION

82. I have read the opinions above expressed by my fellow tribunal members. I am in agreement with their views on the general merits of the matter. I also agree with many of their comments made on the matter of jurisdiction (I have set out details of the paragraphs with which I am in agreement below), but I disagree with their analysis in certain material respects, also as set out below.

83. I note the comments made by my colleagues in paragraphs 18-21 above. However, I contend that these points are not relevant to the matter at hand. As it is common ground between the parties that no contracts were formed between either ICC and DL, or DL

and SLC of the kinds referred to in paragraphs (i) and (ii) of Paragraph 25 above, then the only relevant question is whether a contract was formed by participation (as referred to in paragraph 25(iii) above) between Mr Lokuhetigge and ICC.

84. I agree with the analysis set out in paragraphs 22-25 above. I also agree with the analysis set out in paragraph 26, but I do not see the relevance of the words in brackets in the last sentence.
85. The passage quoted in paragraph 27 is important, but I am concerned that my colleagues may have misinterpreted it in their analysis. This is because there is nothing in Mr Lokuhetigge's case which can be applied to fit to the facts in the passage. Yes, the ICC may require SLC to exercise jurisdiction over its members. But how does this add to our analysis? It does not create a legal relationship; and it is common ground between the parties that a contractual relationship with Mr Lokuhetigge must be identified, which leads us to applicability of the Code.
86. Dwelling on the passage quoted in paragraph 27 a little more, let us focus on the sentence: "Secondly, the SGB may require its members (clubs) to make it a condition of their own contracts with their members (individuals) that they submit to the jurisdiction of the SGB." Again, I do not see how this advances my colleagues' analysis, indeed I find it unhelpful for their arguments because it is common ground between the parties that SLC did not make it a condition of the 2012 iteration of their code (which was the version applicable at the date on which Mr Lokuhetigge played his last domestic match, which finished on 21 February 2016) that Mr Lokuhetigge observe the ICC's Code. This provision was only inserted into the SLC version of the code on 1 November 2016.
87. In relation to paragraph 28 above, I reiterate the point made in my paragraph 86 above. As my fellow tribunal members acknowledge in their draft award, the relevant provision was only inserted into the SLC version of the code on 1 November 2016. Therefore the SLC code cannot be used to establish a contract by participation; I believe this is common ground between the parties and I am not sure of the relevance of the reference to this in this Award.

88. I agree with paragraphs 28(i), 28(iii) and 28(iv) above. I also have no material concerns with paragraphs 29 and 30 above.
89. However, I do have concerns with the analysis in paragraph 31. Again, I believe that the passage quoted is important, but has been misapplied by my fellow tribunal members. In particular, I invite readers to focus on the sentence: “The execution of a contract requires two concurrent declarations of intent, i.e. an offer by one party and an acceptance by the other party.” Assuming we have no issue with the accuracy of this statement (I do not), therefore in this situation we also need to seek a declaration of intent from Mr Lokuhettige. Let us please dwell on what that means: That, when he played a domestic match in Sri Lanka organised by the SLC (nb not organised by ICC) he intended to treat with ICC. Can this really be true? I find this a step too far.
90. Also in paragraph 31, I strongly disagree with the final sentence. Furthermore, I find it wholly inappropriate for a tribunal to comment on how an appellant body may determine issues before it.
91. As for paragraph 32, I do not disagree with Mr Sullivan’s analysis, but I believe it has also been misapplied by my fellow tribunal members, when assessed against the facts before us. In my view, on an objective enquiry, it is too much of a step to conclude that, when he stepped on the field to play in a match in Sri Lanka, organised by SLC rather than by ICC (and importantly, subject to SLC’s anti corruption regime), Mr Lokuhettige had any contemplation or intention of treating with ICC.
92. Dwelling on the second part of the paragraph quoted, particularly the words following (i) and (ii), I would comment as follows: In relation to the words following (i) Mr Lokuhettige’s agreement was to participate in domestic cricket in Sri Lanka. The words “in the particular sport” are very wide; patently (and as I believe all parties have agreed at various points during the proceedings) they do not cover village or back yard cricket, so we need to define what they are really intended cover. In my opinion, these words should be adjusted to cover “events organised by the relevant body”. And, applying this definition, it is pertinent that the event in question was a domestic match organised by SLC; it was not an event organised by ICC. And in relation to the words following (ii), the applicable anti corruption rules were those of SLC, not those of ICC. I fully

accept the Tribunal's assessment that a level playing field for anti corruption can form part of the consideration offered in a 'contract formed by participation', but that level playing field must be applicable to the event in hand (in this case a domestic tournament); not some other set of events (such as international matches). I find that it was not within ICC's gift to "offer" (as consideration to form part of a contract with Mr Lokuhettige) either (a) the match/tournament in question, or (b) the applicable anti corruption regime for that event.

93. For the reasons set out above, I caution all parties to be very careful before using, in relation to the ICC, a description such as "the regulator for the game of cricket worldwide" (or similar descriptions). The parties would be well advised, before using such terms, to review the history of the development of the game, to understand how (by application of media and financial power) ICC achieved its current status, and to review historical examples, such as the 1978 battle between the UK's TCCB and (as it was then known) the International Cricket Conference (<https://www.espnricinfo.com/wisdenalmanack/content/story/152098.html>).
94. In paragraph 33, I draw the parties' attention once more to the passage quoted from Latham LJ. It is clear from this, and also from the other case law extensively analysed by the parties during proceedings, and quoted above, that the courts have been reluctant to apply direct contracts between sports governing bodies and individual participants. This case law has developed primarily because athletes/participants have attempted to sue governing bodies for damages following bans overturned following poor or misapplied decisions of their tribunals. Why then, in this case, where essentially the 'hats' have been flipped around and it is the governing body which is seeking to establish the existence of a contract - would our tribunal be so quick to conclude the existence of a contract? This is especially concerning when one dwells again on the quoted passage from Mance LJ "For there to be a contract, there must be (a) agreement on essentials of sufficient certainty to be enforceable, (b) an intention to create legal relations and (c) consideration. Both of the first two requirements fall to be judged objectively". I see no detailed objective assessment of these elements above. And, again, I emphasize that it was not within ICC's gift to "offer" (as consideration to form part of a contract with Mr Lokuhettige) either (a) the match/tournament in question, or (b) the applicable anti corruption regime for that event.

95. For the reasons set out above, I disagree with the comments in paragraph 34 above. I reiterate that, when Mr Lokuhettige played a domestic match in Sri Lanka, the event was organized by SLC, not by ICC; and the anti corruption regime for that event was also supplied by SLC.
96. In relation to paragraph 35, I cannot see any consideration flowing in either direction when the facts are applied objectively. By participating in a domestic match, Mr Lokuhettige certainly intended to treat with SLC - he clearly wanted to play in the tournament and in the match that they organised. Furthermore, he implicitly accepted SLC's rules and SLC's anti corruption arrangements. But ICC neither offered a match nor a tournament to Mr Lokuhettige, nor anti corruption services in relation to those tournaments, and I cannot see any reason why Mr Lokuhettige would have wanted, needed or sought them from ICC when he played in that domestic match.
97. In relation to the points made in paragraph 36 above, I can only reiterate the points I have already made: The ICC does not administer, organise, or offer the domestic league in Sri Lanka.
98. I have no material concerns with the points made in paragraphs 37 and 38 above. Neither do I have any material concerns with the points made in paragraph 39, other than to make the comment that, quite obviously, in relation to the words "is participating in a match under the aegis of the ICC", the domestic tournament/match was not a match under the aegis of the ICC, but under the aegis of SLC.
99. I have some concerns around the words in paragraph 40 "The domestic match was a match for which the ICC in the exercise of its powers under the Memorandum could make and had made provision." I do not see the relevance of this. By extension, its use to establish jurisdiction would amount to the ICC "pulling itself up with its own bootstraps". As mentioned above, and as I believe is common ground between the parties, the only relevant question is whether a contract can be found to exist between Mr Lokuhettige and the ICC. As for the final few sentences of paragraph 40, especially "However, if he crosses the boundary between the two spheres and participates in the area of the sport made subject to the Code he is subject to the obligations in it", I have

deep concerns as to this view, for the same reason: As is clear from the case law, and common ground between the parties, any jurisdictional oversight may only be established following the identification and formation of a contract.

100. I believe that the above suitably sets out my views as to the jurisdictional issue and the reasons for my dissent. However, I would add some further brief points as to paragraphs 48 and 49. These sections can be covered relatively quickly, in view of their unusual nature. I deeply disagree with the suggestion that a relationship could be formed between ICC and individuals without the need for a contract to be identified. The relevant sections make no explanation as to why this is the case, or why Lord Denning's general rule – that no man should stand in judgment over another under English law – unless Parliament has permitted it or the individual has submitted by contract, needs revision in this case. The analysis in these paragraphs lacks support in law, and provides no explanation as to certain terms such as “likely acceptance under Public International law” and “participation obligation”. It also misinterprets the applicability of the Swim Wales case (see paragraph 49 above); on the contrary, in the Swim Wales case, whilst the judge did indeed comment that there was no need to establish a contract, this result is only supportive of the comments I have made above in paragraph 94 (the reluctance of courts to determine the existence of a contract between an SGB and an individual participant). I encourage all parties to read the Swim Wales case in detail – you will note that the individual had contracted with his club, which included in an agreement to observe the rules of the relevant SGB. There is no reference to a ‘participation obligation’; only to “good old fashioned” contract. When the individual involved in the Swim Wales case sought to establish the existence of a direct contract between himself and the SGB (in order to claim damages) the court commented that there was no need for such a contract. This was because the individual was already bound to the rules of the SGB by means of a contract by incorporation with his own local club. Therefore the case is not in any sense supportive that a jurisdictional relationship can arise between the SGB and a participant in any manner other than by contract, or that there are any such (vague and undefined) legal principles at play such as “public international law” or “participation obligations”. Indeed, the Swim Wales case is only supportive of the principles quoted in the passages by Sullivan, Mance LJ and others above. ICC has no status to apply its jurisdiction other than via contract, and any arguments to the contrary fly in the face of decades of case law. Furthermore,

such arguments run against the legal analysis presented by each of the participants, and two of the tribunal members (including me). They have no grounding in law. Furthermore, their acceptance as precedent or law in this field would be deeply concerning.

CONCLUSION

82. Based on the forgoing, the Tribunal (i) concludes (by a majority) that the ICC has jurisdiction to bring the charges against Mr Lokuhettige and that this Tribunal has jurisdiction to adjudicate upon those charges; (ii) upholds the charges brought against Mr Lokuhettige; (iii) invites submissions from the parties on the issue of sanction within 14 days.

The Honourable Michael J Beloff QC Chair
The Honourable Mr Justice Winston Anderson
Simon CG Copleston Esq

London,
19 January 2021

APPENDIX 1

SUMMARY OF RELEVANT FACTS

Corrupt approaches to Mr Lokuhettige by a known match-fixer, Mr X

In his interviews with the ACU, Mr Lokuhettige explained that he had received a number of corrupt approaches from a known match-fixer, Mr X:

- In his 14 June 2018 interview, he said:
 - He met Mr X in or around June or July 2016 in a pub while out drinking with friends.¹⁰
 - Mr X introduced himself as a steel businessman, and they exchanged phone numbers and built a relationship.¹¹
 - In September 2016, Mr X called him to ask about his recent retirement from cricket. Mr X continued to contact him by phone to enquire whether they could 'do business' - which meant getting a 'close friend' of Mr Lokuhettige to 'do something during the game'.¹²

¹⁰ See transcript of ACU interview with Dilhara Lokuhettige on 14 June 2018 (**STEVE RICHARDSON:** Okay. Probably this is a good opportunity for me to turn things over to you and and say to you, Dilhara, just tell us what you want to tell us, tell us the truth. **DILHARA LOKUHETTIGE:** Yeah, because I just played my last game on 2016 February and er after that I - normally I'm going with friends out and drinking like that, and I met one of.... an Indian guy in a pub, right? And his name is [Mr X], right? [...] It was I think, exactly I don't remember the month, June or July, like that, 2016, but exactly I can't tell the time period.)

¹¹ See transcript of ACU interview with Dilhara Lokuhettige on 14 June 2018 (And he introduced himself to me, he's a steel businessman. I introduced myself, I am a cricketer, like that. After that, we shared our phone numbers and he called me and he make a relationship with me).

¹² See transcript of ACU interview with Dilhara Lokuhettige on 14 June 2018 (And 2016 September I think before I leave from my country to here I put the press conference in Sri Lanka to announce my retirement, and I did that one and after that I came here. Again he called me and he asked about the my retirement, "Why did you retire from the cricket, because you have more ages, you're still 35," like that he said. I said, "No, I have to look after my kids, and I've got an opportunity to play in Australia and I have to look after my kids." That's all. After that er I think 2016 I was injured in America when

- Initially, he said no to Mr X because it was a risk to approach a player. However, he admits that he did ultimately approach Sri Lankan international cricketer Player B on behalf of Mr X in December 2017.¹³
- In the first part of his 13 November 2018 interview, he said:
 - As well as once meeting Mr X in a pub (in Colpetty), he once met Mr X (approximately a year prior to the interview) in a Hilton hotel in Colombo.¹⁴

I was playing there. After that I returned to Australia. And... Between that, he called me again, [Mr X] called me again. He called me a few times. And he asked me, "Dilhara, can we do the business, one business?" I asked, "What?" He said, "If you have a close friend, ere r can he do something during the game?).

¹³ See transcript of ACU interview with Dilhara Lokuhettige on 14 June 2018 (**STEVE RICHARDSON:** Let me take you back. I would like to know what he said in order to to get you to approach cricketers. What did he tell to you? **DILHARA LOKUHETTIGE:** er...He told me, "Can you do some business?" That's why I asked, what? And firstly he said, "If you have any close friends we tell we can tell them to do something in the middle," like that. First time I said, "No, I can't do that, it is a risk." I said all the time, "It is a risk," because I know I have attendance to your meetings when I was playing. That's all, not any other things. Because...That's why I didn't - I didn't work anything and not receive any money. You can check anything. **STEVE RICHARDSON:** Did he did he say that at the first meeting? **DILHARA LOKUHETTIGE:** No, no, no, no. **STEVE RICHARDSON:** No? **DILHARA LOKUHETTIGE:** No. With the phone. **STEVE RICHARDSON:** That was on the phone, and he asked - you exchanged telephone numbers at the first meeting? **DILHARA LOKUHETTIGE:** Yes, that's right. **STEVE RICHARDSON:** Can you remember when he first asked you to fix? **DILHARA LOKUHETTIGE:** Exactly I can't remember, because with the phone he asked me - yeah **STEVE RICHARDSON:** On WhatsApp? **DILHARA LOKUHETTIGE:** Yeah. **STEVE RICHARDSON:** Did he did he ask you to approach [Player B]? **DILHARA LOKUHETTIGE:** Yeah. No, not [Player B]. He didn't mention any name. mention any name **STEVE RICHARDSON:** He didn't. Did he ask you to get cricketers for the T10 in Dubai to fix? **DILHARA LOKUHETTIGE:** Yeah, he asked me about that. **STEVE RICHARDSON:** Okay, tell me what he asked, please. **DILHARA LOKUHETTIGE:** no, He asked me, do you have any...because thereafter he called me, I know, he's now doing something for from this area. They are following cricket, right? But after I retired I don't want to follow cricket because I am only getting news, you know, that's all. That's why I know [Player B] going to tournament, he's very close to me, that why I approached to him. **STEVE RICHARDSON:** Did [Mr X] tell you about any other cricketers who fix? **DILHARA LOKUHETTIGE:** No, no because he didn't mention any names, you know? He didn't mention. He said a lot of cricketers working with us, he said, working with us, because I asked who are the names. He didn't say).

¹⁴ See transcript of ACU interview with Dilhara Lokuhettige on 13 November 2018 (part one), (**STEVE RICHARDSON:** And you gave us a description of Mr. [X], a physical description and also what he did. Have you met Mr [X] anywhere else? **DILHARA LOKUHETTIGE:** Couple of times, you know, only one time is bar and one time is I think Hilton or something. **STEVE RICHARDSON:** In the Hilton? **DILHARA LOKUHETTIGE:** Yeah. **STEVE RICHARDSON:** So you met him once in a bar. Which bar was it? **DILHARA LOKUHETTIGE:** It is in Colpetty, you know, that character pub.

- Mr X had invited him to the hotel, where he asked him to 'work' for Mr X and 'get' some of his friends to 'fix some games'.¹⁵
- In the second part of his 13 November 2018 interview, he said:
 - He had further things he wished to say to the ACU about how he met Mr X, stating he had actually first met Mr X at the house of a woman called Ms Y, having been introduced to Ms Y by a mutual friend, called B.¹⁶

[...] **STEVE RICHARDSON:** Okay. So you met him once in the pub? **DILHARA LOKUHETTIGE:** Yeah. **STEVE RICHARDSON:** You said the Hilton? **DILHARA LOKUHETTIGE:** Yeah. **STEVE RICHARDSON:** Which Hilton? **DILHARA LOKUHETTIGE:** It is one Hilton is there that near the Galle Face. **STEVE RICHARDSON:** Near Galle? **DILHARA LOKUHETTIGE:** Near the Galle Face Beach that - **STEVE RICHARDSON:** In Colombo is this? **DILHARA LOKUHETTIGE:** Colombo, yeah. **STEVE RICHARDSON:** Colombo? So it's the Hilton Hotel in Colombo. **DILHARA LOKUHETTIGE:** Yeah. **STEVE RICHARDSON:** When did you meet him there? **DILHARA LOKUHETTIGE:** Exactly I don't remember last time we have - when I was in Sri Lanka. **STEVE RICHARDSON:** How long ago? **DILHARA LOKUHETTIGE:** Now, almost one year now. **STEVE RICHARDSON:** A year? **DILHARA LOKUHETTIGE:** Yeah).

¹⁵ See transcript of ACU interview with Dilhara Lokuhettige on 13 November 2018 (part one) (**STEVE RICHARDSON:** At the - he asked you that at the Hilton meeting? **DILHARA LOKUHETTIGE:** Yeah. **STEVE RICHARDSON:** Who was present at that? **DILHARA LOKUHETTIGE:** No one. Only myself. **STEVE RICHARDSON:** Okay. Did he ring you and ask you to come to the Hilton? **DILHARA LOKUHETTIGE:** Yeah. WhatsApp. **STEVE RICHARDSON:** He WhatsApped you? **DILHARA LOKUHETTIGE:** Yeah. **STEVE RICHARDSON:** And what did he say to you when you were there? **DILHARA LOKUHETTIGE:** Yeah, he asked me but I don't remember because he asked me one of tournament and he asked me to get some if I have any friends can - **STEVE RICHARDSON:** Mmm. **DILHARA LOKUHETTIGE:** Get to work some for him. **STEVE RICHARDSON:** Yeah. **DILHARA LOKUHETTIGE:** Yeah. **STEVE RICHARDSON:** Okay. When you say work for him, what did he mean? **DILHARA LOKUHETTIGE:** Yeah, he mean to fix some games. **STEVE RICHARDSON:** Fix, fix games? **DILHARA LOKUHETTIGE:** Yeah. **STEVE RICHARDSON:** Okay. And you understood that that was - **DILHARA LOKUHETTIGE:** Yeah, because I understood it. **STEVE RICHARDSON:** And what did you say to him? **DILHARA LOKUHETTIGE:** I said it is very hard to do, because not - because I know that. You know I am a player - **STEVE RICHARDSON:** Yeah. **DILHARA LOKUHETTIGE:** And I know how hard to do that. I can't - I said it is not easy to do. **STEVE RICHARDSON:** No. **DILHARA LOKUHETTIGE:** I said yeah. **STEVE RICHARDSON:** Okay. **DILHARA LOKUHETTIGE:** But he's not forced me. He said just try).

¹⁶ See transcript of ACU interview with Dilhara Lokuhettige on 13 November 2018 (part two) (**STEVE RICHARDSON:** It's the same as this morning, so you tell the truth and the whole truth. Dilhara, you've, you've said to us that you've got further things to say to us about how you met Mr. [X]. And you said you were going to tell us about what happened from the start to the finish. So, over to you. Please tell

- However, at that point in time he did not know that the person he had met was Mr X.¹⁷
- Mr X was with two or three others when he first met Mr X, and they asked him to approach Sri Lankan international players Player C and Player D.¹⁸

us what it was. You said that you first met [Mr X] at [...] [Ms Y]'s house. Tell us about that. **DILHARA LOKUHETTIGE:** Yeah. Firstly, you know, when I was in the Ballys Casino, **STEVE RICHARDSON:** When you were in? **DILHARA LOKUHETTIGE:** Bally's Casino. **STEVE RICHARDSON:** Bally's Casino, right. **DILHARA LOKUHETTIGE:** One of my friends he's [...] [B], and he's friends with [Ms Y], right? Then he asked me to go to [Ms Y]'s place. I don't know any other things. And I went to the [Ms Y]'s place. Then two or three guys, or more, in the end, [Mr X] also there, and they introduced me).

¹⁷ See transcript of ACU interview with Dilhara Lokuhettige on 13 November 2018 (part two) (**STEVE RICHARDSON:** At [Ms Y]'s house she introduced you to [Mr X] and the other two, and what did she say? **DILHARA LOKUHETTIGE:** Yeah she said, she introduced myself, he played for Sri Lanka and now, what do you want, you tell him to what you're expecting, what players you need. And that's everything. **STEVE RICHARDSON:** She said that to them? **DILHARA LOKUHETTIGE:** Yeah. No. Thing is, you know, what they're expecting. **STEVE RICHARDSON:** Yeah **DILHARA LOKUHETTIGE:** That thing she say to them. **STEVE RICHARDSON:** Okay. And this was in '15 or '16. So the first time you met [Mr X] then wasn't in June or July 2017? [...] **DILHARA LOKUHETTIGE:** No, that is the first time. **STEVE RICHARDSON:** So it was back in '15 or '16. **DILHARA LOKUHETTIGE:** Yeah. **STEVE RICHARDSON:** Okay **DILHARA LOKUHETTIGE:** But I don't remember his, you know, a long time, and after that, 2017, you know, after that case problem, he comes to the hotel, then I recognize him. **STEVE RICHARDSON:** Yeah. **DILHARA LOKUHETTIGE:** Otherwise I don't know who's calling with them and I don't know, after I met him, I know he's the guy. **COLIN TENNANT:** So when you were at [Ms Y]'s house, also there was [Mr X], is that right? **DILHARA LOKUHETTIGE:** Sorry? **COLIN TENNANT:** [Mr X] was there? **DILHARA LOKUHETTIGE:** No, that's why I'm telling you, they introduced me, [Ms Y] introduced me. She mentioned names but I don't remember the name because only short conference I went. After that, that 2017, after that match and everything, they comes to the club and I went to meet. Then he introduced himself he's [Mr X]. Then I remember he's the guy, same guy).

¹⁸ See transcript of ACU interview with Dilhara Lokuhettige on 13 November 2018 (part two) (**DILHARA LOKUHETTIGE:** One of my friends he's [...] [B], and he's friends with [Ms Y], right? Then he asked me to go to [Ms Y]'s place. I don't know any other things. And I went to the [Ms Y]'s place. Then two or three guys, or more, in the end, [Mr X] also there, and they introduced me. And they asked me to get some players to do some work in the game. Then I said, "I will try" and after that I left from there, I don't have, having any phone numbers, I don't have any connection with them after that. **STEVE RICHARDSON:** Yeah. **DILHARA LOKUHETTIGE:** Then, you know, last year, because I don't having any connection with them, only [B] I talking some time, but not every time. After that, last year when I was in the Marina Casino, one of my friends, he's a casino friend and he asked me, he have another friend, and he's asking some players to do some in the game. Then I said, "Okay, I will try something." Then I said - after that I think same day after a couple of hours, to three or four guys that comes to meet me, and another Indian guy as well, he's living in Sri Lanka. I think he's a businessman but I don't have any connection with him. [...] I don't have any numbers, because of my friend I went. And he, they they asked me to get some players. I said I will try. Then that Indian guy, he talked to his Indian friend, and after their conference they asked me to get [Player C] and [Player D]. And it is I think India tour, right? India/Sri Lanka tour, in Sri Lanka, 2017, **STEVE RICHARDSON:** Yeah **DILHARA LOKUHETTIGE:** You can check it. **STEVE RICHARDSON:** After the Zimbabwe tour? **DILHARA LOKUHETTIGE:** Ah yeah, I think so. And after that I said I will try. I will try. And I know personally

- He told Mr X and the others that he would try to get Player C and Player D involved in fixing. However, he then went on to lie to Mr X and the others by saying that those players had agreed to be involved when they had not. This led to a difficult moment when (of course) both players did not perform the fix.¹⁹

I can't talk to the players. I thought, because, as a cricketer, I know normally... Before that I said I will try and then he, that Indian who is living in Sri Lanka, that guy talked to the Indian who's living in India. **STEVE RICHARDSON:** Who's that? [Mr X]? **DILHARA LOKUHETTIGE:** I don't know that time, he's the person I don't know, because after that I know he's the guy).

¹⁹ See transcript of ACU interview with Dilhara Lokuhettige on 13 November 2018 (part two) (**DILHARA LOKUHETTIGE:** Yeah, at that time I don't know, and he talked to him and he said, yes, he can try to get them. Then after that I said I think only two, three days before the game this happened, and I said, "Yes, I spoke to them, yes, okay, I can get." And then he's given again the message to his friend and he said, "Yes, Dilhara can get just two players." And, he, he expecting with the players the plan, you know? He said to that guy and he told me, repeat me, he said, "We think first four overs or six over," exactly I don't remember it. "Four overs or six overs." Both of them have to lose their wicket, right? Then again, you know, I told them, "I will try to tell them, I don't know." Then again I took risk and I said, "Yes, they agreed – they agreed to do that." Then he again passed the message. Okay, then all done. The next day before the match, before the match, they came to meet me and after that I think evening I think start the game, 7 o'clock like that, T20 game, and took me to the Galadari Hotel. And that time, you know, that friend, Indian friend with us, he already spoke to my friend and said, "I am with money," that time, "I am with money. After work done. I am going to hand over it." Then we seated and we start the game, and you know, [...] [Redacted Player] and [Redacted Player] comes to open. And then his friend talked to him, or I think some website call, video call, to the his friend, what's going on, this is another one person coming open. Then, then he, he asked with my friend, and my friend asked me what's happened? This is another person. I said, "I don't know about it." Then, then again he asked me, "[Redacted Player] know about it, right? Is [Redacted Player] going to do that?" I said, "Yes, he is going to do that." Then match is started and I think first we got [...] [Redacted Player] and then after that they expected within first four overs lose the wicket, but [Redacted Player] didn't lose his wicket and he got out after that, I think. Right? Then again after that, [Redacted Player] comes to the wicket. And again that guy called to that person and asked, he also going to do the work, he's going to lose the wicket? Because he's also in the first six overs I think, [Redacted Player] was. I said yes. Then [Redacted Player] start to hit everywhere, right? He got [Redacted] that match. And again he took the call and shouting him, "What's going on, I lose my money?" like that. "And how you're going to recover?" [...] And then he asked him with the phone to everyone can listen it. Then I don't have any option because I took a risk it, and I didn't say anything. And after that he cut the phone and his friend said, "Now you'll have to recover it," like that. Then, I don't know how to do that, but after that I left. And after a couple of three weeks, that his friends comes to the hotel, right? Then my friend asked me to "They are in here, they need to talk to you," and they bring me to, took me to the hotel. Then I seen it's a [Mr X]. I met him there...).

- The match in question was a Twenty20 International between Sri Lanka and India, which took place on 6 September 2017.²⁰
- Mr Lokuhettige never reported any corrupt approaches that Mr X had made to him to the ACU. Mr Lokuhettige says he did not do so because he had retired from cricket.²¹

Admitted approach Player B

Player B, a Sri Lankan international player, says as follows in respect of an approach made to him by Mr Lokuhettige on 19 November 2017:

- [Redacted].

²⁰ See transcript of ACU interview with Dilhara Lokuhettige on 13 November 2018 (part two) (**STEVE RICHARDSON**: Right. So we have here on September 6th, Sri Lanka vs. India, 170 for 7, Sri Lanka. [Match and Player Statistics Redacted]. So this is the match you're talking about **DILHARA LOKUHETTIGE**: Yeah. **STEVE RICHARDSON**: Fall of wickets: [Match and Player Statistics Redacted]. **DILHARA LOKUHETTIGE**: Yeah, that's why I told you. **STEVE RICHARDSON**: Okay, and this is the match that you're talking about. So as far as... **COLIN TENNANT**: Sorry, Steve, what was the date of that? Sri Lanka v. India? **STEVE RICHARDSON**: 6th of September at Colombo, T20 match. **COLIN TENNANT**: Thank you **STEVE RICHARDSON**: India won by 7 wickets. So as far as that match is concerned, they asked you to fix it, yeah? **DILHARA LOKUHETTIGE**: Sorry? **STEVE RICHARDSON**: They asked you to fix the match? **DILHARA LOKUHETTIGE**: For me? **STEVE RICHARDSON**: Yes, for you to do, to get players to do something in the match? **DILHARA LOKUHETTIGE**: Yeah. **STEVE RICHARDSON**: They told you who to approach? **DILHARA LOKUHETTIGE**: No, that's why I told you that Indian friend... **STEVE RICHARDSON**: Yeah, they told you who to approach – **DILHARA LOKUHETTIGE**: They straightaway told me, they mentioned the names. **STEVE RICHARDSON**: Yeah, they told you who to approach, but you didn't do that. **DILHARA LOKUHETTIGE**: No, because I know that – **STEVE RICHARDSON**: You didn't do that, but you told them that you had). The scorecard of the match is available online at

<https://www.espnricricinfo.com/series/17891/scorecard/1109610/sri-lanka-vs-india-only-t20i-sl-v-ind-2017>.

²¹ See transcript of ACU interview with Dilhara Lokuhettige on 14 June 2018 (**STEVE RICHARDSON**: Okay, just something else I need to ask you. When [Mr X] sent you messages to ask you to approach players to fix, you....did you report that to anybody? **DILHARA LOKUHETTIGE**: No, because already I retired from cricket, because I am not playing, you know? **STEVE RICHARDSON**: So you didn't tell anybody, didn't report it? **DILHARA LOKUHETTIGE**: No).

- [Redacted]. After training on 19 November 2017, he received a call from Mr Lokuhettige while he was on the bus returning to his hotel. He told Mr Lokuhettige that he would call him back once he was back at the hotel.
- When he got back to the hotel, he called Mr Lokuhettige. During that conversation, Mr Lokuhettige asked him to spot fix in an upcoming T10 League tournament that was taking place in Sharjah, UAE, in December 2017.
- He was concerned about the call he had received from Mr Lokuhettige and informed his friends and international teammates, Player F and Player G, who were also playing in the BPL at the time. Player G told him to tell his coach, Coach A, who then contacted the Bangladesh Cricket Board's Anti-Corruption Manager, Major Abu Morshed.
- Coach A suggested that if Mr Lokuhettige were to call him again, he should record the call.
- Mr Lokuhettige did call Player B again. Player B took Coach A's advice, and recorded the call. The conversation went as follows:

MR LOKUHETTIGE:	Brother, where are you?
PLAYER B:	I'm on my way after practice, big brother. I've just finished practice.
MR LOKUHETTIGE:	Where are you, in Bambalapitiya?
PLAYER B::	No, big brother, I'm in Colombo.
MR LOKUHETTIGE:	Oh, are you? (Unclear)
PLAYER B::	Yes, big brother.
MR LOKUHETTIGE:	What practice?
PLAYER B::	It's not like that, big brother, I was just asked to come to bat.
MR LOKUHETTIGE:	Oh (Unclear)
PLAYER B::	Going for it on thirteenth.

MR LOKUHETTIGE:	Is it only you there now?
PLAYER B::	I'm all by myself, big brother.
MR LOKUHETTIGE:	By the way, can you do some work?
PLAYER B::	(Laughing) What does that mean, big brother, like what?
MR LOKUHETTIGE:	(Not clear) Everybody is doing these things. That is what I'm telling you... (Not clear) Go there, play one and return. So, playing just one that way will be enough. One or two.
PLAYER B::	Oh!
MR LOKUHETTIGE:	There isn't much to be done... (Not clear) Say for example, you bat for four balls... (Unclear)
PLAYER B::	Yes, big brother.
MR LOKUHETTIGE:	Perhaps, you have to score two runs... (Not clear) Something like that. Otherwise, perhaps they... (Unclear)
PLAYER B::	Oh!
MR LOKUHETTIGE:	Playing one like that.
PLAYER B::	Hey, everything will be finished if I get caught, won't it, big brother?
MR LOKUHETTIGE:	(Laughing) Hey bro, who gets caught? Either you reveal it or I do.
PLAYER B::	Hm!
MR LOKUHETTIGE:	Who's going to know?
PLAYER B::	Yeah.
MR LOKUHETTIGE:	(Not clear) Playing solely for that purpose (not clear), you know (not clear)
PLAYER B::	No!
MR LOKUHETTIGE:	(Not clear) It's organized by our ... (Unclear)
PLAYER B::	Oh! Is he?
MR LOKUHETTIGE:	Hey bro, it's our friend [redacted]'s father who's organizing it... (Unclear)

PLAYER B::	Ah!
MR LOKUHETTIGE:	No problem, if you're scared. Don't do it if you're scared. Because everybody (not clear). Everybody there has done it. Plus, something like that won't be too embarrassing.
PLAYER B::	Oh!
MR LOKUHETTIGE:	Say, if you like it. It can be done the following day and money will flow to Sri Lanka the next day...
PLAYER B::	Oh!
MR LOKUHETTIGE:	Don't tell anyone. These things aren't done if you tell anyone. Not anyone. You should not ask about these things from anyone.
PLAYER B::	Oh!
MR LOKUHETTIGE:	You do it according to your conscience, if you can. (not clear) That's all. If you can't, just leave it, that's all... Don't seek advice about these things from anyone.
PLAYER B::	Oh!
MR LOKUHETTIGE:	Say whether you can. There are about four to five matches. Do at least one, if possible.
PLAYER B::	Oh! Big brother, I'll think about it and let you know.
MR LOKUHETTIGE:	Think about it and tell me, because after going to Dubai, WhatsApp and so on won't be working.
PLAYER B::	Oh! Big brother, I don't know about that.
MR LOKUHETTIGE:	It doesn't work, it's not working. You can't make WhatsApp and internet calls.
PLAYER B::	Ok! Ok!
MR LOKUHETTIGE:	They're not working. You can't make these kind of calls. So, you think about it and tell me without making a fuss. Don't tell anyone. Don't tell any outsider. Only you and I know.
PLAYER B::	Ok, ok, big brother.
MR LOKUHETTIGE:	Ok, ok, brother.
PLAYER B::	Ok, bye!

MR LOKUHETTIGE:	Ok, bye!
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After the ACU played the recording to Mr Lokuhettige, he admitted that this conversation had taken place between him and Player B.²²

Approach to Player A

Sri Lanka international cricketer Player A provided the following information concerning a corrupt approach that Mr Lokuhettige made to him (which Player A reported after having learned of Player B's separate report, and having seen the Al Jazeera documentary):

- On [redacted] September 2017, he was playing in a 'mercantile' match for [redacted] against [redacted] at the [redacted] in Colombo.
- During a stoppage in the match at around 2.30pm, one of his teammates, Player H, informed him that Mr Lokuhettige was looking for him. Because he and Mr Lokuhettige had previously been colleagues at [redacted], he assumed that Mr Lokuhettige had come to watch his old company's team and wanted to speak to him about cricket.

²² See transcript of ACU interview with Dilhara Lokuhettige on 14 June 2018 (**STEVE RICHARDSON:** Okay, so that is a recording made by [Player B] of a conversation and a call between you and him on the 19th of November 2017. Sorry, I'll correct myself on that. That was on the 7th of December 2017. On the 19th of November, 2017, you had phoned him when he was playing in the Bangladesh Premiere League, and I think we discussed that before. He.... **DILHARA LOKUHETTIGE:** Can you repeat again? **STEVE RICHARDSON:** Sorry, yes. **DILHARA LOKUHETTIGE:** Sorry for that. **STEVE RICHARDSON:** On the, that's all right. On the 19th of November you called [Player B] when he was playing in the Bangladesh Premiere League. **DILHARA LOKUHETTIGE:** Right. **STEVE RICHARDSON:** Okay, and you had a conversation with him. [Player B] spoke to some of his senior players about that, because he said that you approached him to corrupt, to fix matches. They advised him that if you called again, he should record the call. That is what he did. When you called him again on the 7th of December. **DILHARA LOKUHETTIGE:** Yeah. **STEVE RICHARDSON:** Do you agree that that is you on that recording? **DILHARA LOKUHETTIGE:** Uh, yes. **STEVE RICHARDSON:** You do. And obviously that's in your language, **DILHARA LOKUHETTIGE:** Yeah **STEVE RICHARDSON:** And we've had it translated. **DILHARA LOKUHETTIGE:** Yeah **STEVE RICHARDSON:** We've had it translated both officially, and I've gone through it with [Player B]. Do you want to tell me - we've given you a copy of our transcript. Do you accept that that transcript is accurate? **DILHARA LOKUHETTIGE:** Yeah, I can tell you the truth, everything)

- He left the team's dressing room and spoke to Mr Lokuhettige outside. While outside, Mr Lokuhettige informed him that he could get him into upcoming Twenty20 international matches to be played by Sri Lanka if he did something for Mr Lokuhettige in those matches, for example conceding 12-15 runs in an over when bowling. He says Mr Lokuhettige said 'you can do something for me and you'll get rewarded'.
- Mr Lokuhettige did not inform him how exactly he would be rewarded or precisely what the reward might be, but he did point out a man who was sitting in Mr Lokuhettige's car, indicating that that was the man who would be rewarding him. Player A did not know who the man in the car was at the time, but he later recognised him when, at an anti-corruption session, the ACU presented a picture of an individual (who was a person of interest to the ACU) identified as Mr X. He recognised that the person in the picture (Mr X) was the person who had been sitting in Mr Lokuhettige's car.
- He told Mr Lokuhettige that he was not interested in the proposal, because he made enough money through playing cricket.
- On [redacted] September 2017, the day after Mr Lokuhettige's approach, he received two text messages from Mr Lokuhettige, which stated 'We will do that work today, right. I do not have time. I am going to Oz'. A few weeks later, on [redacted], he received further messages from Mr Lokuhettige, via WhatsApp, enquiring of his whereabouts. He also had a number of missed calls from Mr Lokuhettige. However, because he was not interested in what Mr Lokuhettige had been offering him, he provided only a cursory response to Mr Lokuhettige.
- Months later, on 2 June 2018 (after the Al Jazeera documentary had aired), he received messages on Facebook from Mr Lokuhettige, which included messages that read: 'Ah younger brother, how is the situation? I am scared to talk now. I will happen, right ... We invited the trouble ... no worries I am going to be clear, okay anyway Good luck for your future'.

APPENDIX 2

WARNINGS GIVEN TO MR LOKUHETTIGE BY THE ACU

ACU interview with Dilhara Lokuhettige on 12 June 2018: **STEVE RICHARDSON:** Thank you very much. So, Dilhara, I have form of words here that we read out to people in your position so that they're aware of what will take place. So please note that you're about to be interviewed pursuant to the both the ICC and the Emirates Cricket Board Anti-Corruption Code, and in respect of an ongoing investigation into a possible breach or breaches of the code. You are bound by this code, and as such you are reminded that it is an offense to fail to cooperate with such investigations. You are therefore required to provide truthful, accurate and complete responses to any questions asked and to provide all information requested. The answers and information you provide may be used as evidence to support a charge of breach of the code by a third party, or they could be used to support a charge against you if they reveal that you may have breached the code, either by acting corruptly yourself or by failing to report corrupt advances or corrupt actions by others. If you fail to answer any questions, any tribunal convened under the code to hear a case against you is entitled to draw adverse inference from your failure to answer. That is the tribunal could infer that any answers you would give would incriminate you. The interview will be fully recorded and may be produced in any subsequent proceedings. If it becomes necessary, a transcript could be produced and a copy furnished to you. If at any time you'd like to have a break in the interview or request that the recording is switched off for any reason, please let us know. Do you understand that caution? **DILHARA LOKUHETTIGE:** A little bit. **STEVE RICHARDSON:** ok, Let me put it, Let me try and put it in simple terms. So this is an official investigation under the ICC and the Emirates Cricket Board Anti-Corruption Code, so you're aware of the fact that there is a code. **DILHARA LOKUHETTIGE:** Yes. **STEVE RICHARDSON:** Because you're a participant you have to cooperate and you have to answer questions fully and truthfully. **DILHARA LOKUHETTIGE:** Yeah **STEVE RICHARDSON:** Okay? And if you don't, then that can be held against you by the tribunal. And everything that we record today can be used in a tribunal either against somebody else or against you, depending on what what evidence is put forward. Can you understand that a bit better? **DILHARA LOKUHETTIGE:** Yea

ACU interview with Dilhara Lokuhettige on 14 June 2018: **STEVE RICHARDSON:** Thank you very much. Dilhara, I'm going to give you the same caution that we gave you the other day. Please note that you're about to be interviewed pursuant to the ICC's Anti-Corruption Code and also the Emirates Cricket Board Anti-Corruption Code, and in respect of an ongoing Anti-Corruption Unit investigation into a possible breach or breaches of the code. You are bound by these codes, and as such you are reminded that it is an offense to fail to cooperate with such investigations. You are therefore required to provide all information requested. The answers and information you provide may be used as evidence to support a charge of breach of the Code by a third party, or they could be used to support a charge against you if they reveal that you may have breached the Code, either by acting corruptly yourself or by failing to report corrupt advances or corrupt actions by others. If you fail to answer any questions, any tribunal convened under the Code to hear a case against you is entitled to draw adverse inference from your failure to answer. That is, the tribunal may infer that any answers you would give would incriminate you. The interview will be fully recorded and may be produced in any subsequent proceedings. If it becomes necessary, a transcript may be produced and a copy can be furnished to you. If at any time you'd like to have a break in the interview or request that the recording is switched off for any reason, let us know. Now last time I think I explained that in simple terms to you, that you have to cooperate and that you have to tell the truth and give full and complete answers. The recordings can be used in a tribunal either for you or against somebody else. You understand understand that? **DILHARA LOKUHETTIGE:** Yeah)

ACU interview with Dilhara Lokuhettige on 13 November 2018: **STEVE RICHARDSON:** Okay. I'm gonna read you the same caution that we read last time. Okay. Please note that you are about to be interviewed pursuant to the ICC's Anti-Corruption Code and in respect of an ongoing ACU investigation into a possible breach or breaches of the code. Now it's also in relation to the ECB, the Emirates Cricket Board Anti-Corruption Code, but they are almost identical. As such, you are reminded that it is an offense to fail to cooperate with such investigations. You are therefore required to provide truthful, accurate, and complete responses to any questions asked, and to provide all the information requested. The answers and information you provide may be used as evidence to support a charge of breach of the code by a third party, or they could be used to support a charge against you if they reveal that you may have breached the code, either by acting corruptly yourself or by failing to report corrupt advances or corrupt actions by others. If you fail to answer any

questions, any tribunal convened under the code to hear a case against you is entitled to draw adverse inference from your failure to answer, that is the tribunal may infer that any answers you would have given would incriminate you. The interview will be fully recorded and may be produced in any subsequent proceedings. If it becomes necessary, a transcript may be produced and a copy can be furnished to you. If at any time you would like to have a break in the interview or request that the recording is switched off for any reason, please let us know. Do you understand that caution? **DILHARA LOKUHETTIGE:** Yeah. That's all - **STEVE RICHARDSON:** Right, so basically, what it means, Dilhara, is you have to tell the truth. **DILHARA LOKUHETTIGE:** Yeah. **STEVE RICHARDSON:** Okay? You - because you are bound by the Anti-Corruption Code, you must tell the truth. **DILHARA LOKUHETTIGE:** Yeah. **STEVE RICHARDSON:** You must give us full and complete and accurate answers, and if you don't answer any questions, then the people - the lawyers and people who will judge this matter, this case, they can think that you're trying to hide something. **DILHARA LOKUHETTIGE:** Yeah **STEVE RICHARDSON:** Okay? If you don't answer any questions. And obviously you can have copies of it. So you understand, you understand all that, yeah? Okay. So Dilhara, once again thank you for agreeing to come and see us.